APPEAL NO. 93419

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in City, Texas, on May 5, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) failed to prove by a preponderance of the evidence that he was injured in the course and scope of his employment on date of injury, but had given timely notice of an alleged injury. Claimant disagrees with several of the hearing officer's findings of fact and the conclusion of law indicating the claimant had failed to carry his burden of proof. Respondent (carrier) urges that the evidence supports the hearing officer's decision and asks that it be affirmed.

DECISION

Finding the evidence sufficient to support the determination of the hearing officer, the decision is affirmed.

The hearing officer very thoroughly and fairly sets forth the pertinent evidence in his Decision and Order and we adopt it for purposes of this appeal. Very briefly, the claimant asserts that he was injured in the early morning hours, between 12:30 and 1:00 a.m. of date of injury, when some stacked boxes fell on him causing injury to his neck and back. (A report he filled out entitled "Employer's First Report of Injury or Illness" dated 1-30-92 indicates the injury occurred at 11:00 a.m.). He claimed there were some witnesses to the accident but no evidence from any witness who stated they observed the incident was offered. He states he continued working but did go to his doctor a few days later because of pain in his neck and back, was x-rayed, and was given some pain killers and some time off. There are no medical records in evidence of such a visit and the only records from the doctor in question indicate that the claimant had been seen by the doctor for blood pressure problems. The claimant testified that he made out an Employers Report of Injury and had a co-manager sign it. No record of such has been found in the employer's files, although the co-manager, who no longer is with the employer, provided a statement indicating she had signed such a form and a copy of the form kept by the claimant was admitted. The claimant also states he told his supervisor of the injury (the supervisor is over several stores and only came to the claimant's store periodically); however, the supervisor, who was called as a witness, specifically denies this and asserts that the first he heard of the claimed injury was months later when he was called by the employer's workers' compensation carrier inquiring about the matter. The claimant testified that he made a personal decision to file for his medical expenses on his group health insurance policy. He did not file a workers' compensation claim until after he was terminated for misconduct in early June 1992 because he did not want it to be reflected on the employer's workers' compensation experience record. The parties agreed at a benefit review conference that as of that date, the claimant had not suffered disability as a result of the asserted injury.

Several of the claimant's complaints regarding the findings of fact relate to the notice issue. Since that issue was decided in the claimant's favor and since it has not been

appealed by the carrier, it has become final and need not be decided by us. The remaining findings and conclusion of law go to the issue of injury in the course and scope. As we have indicated, there is sufficient evidence to support the hearing officer's determination on this issue. Without doubt, there was some inconsistency and conflict in the evidence before the hearing officer. This was for his resolution as the fact finder in the case. Articles 8308-6.34(e) and (g); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. *See generally* Garza v. Commercial Insurance Co. of Newark N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Only were we to find, which we do not, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb his decision. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge